

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WAUKESHA FLORAL & GREENHOUSES, INC.
(d/b/a Waukesha Floral and Waukesha Floral &
Greenhouse),

Plaintiff,

Case No. 15-CV-1365-RTR

vs.

JAMES POSSI and YOUR FLORIST, LLC,

Defendants,

and,

AMERICAN FAMILY MUTUAL INSURANCE CO.,

Intervenor Defendant.

INTERVENOR COMPLAINT

NOW COMES the intervenor American Family Mutual Insurance Company, by its attorneys Emile Banks & Associates, LLC, which alleges and shows to the court as follows.

1. American Family Mutual Insurance Company (“American Family”) is an insurance company duly licensed and authorized to conduct business in the State of Wisconsin, with its principal business at 6000 American Parkway, Madison, Wisconsin 53783.

2. That upon information and belief, the plaintiff Waukesha Floral & Greenhouses, Inc. is a Wisconsin corporation with its principal place of business located at 319 South Prairie Avenue, Waukesha, Wisconsin 53186.

3. That upon information and belief, the defendant James Possi is an adult resident of the State of Wisconsin, and is the owner of Your Florist, LLC.

4. That upon information and belief, the defendant Your Florist, LLC is a Wisconsin Limited Liability Company, with its principal place of business located at 918 East Moreland Boulevard, Waukesha, Wisconsin 53186.

5. The plaintiff Waukesha Floral & Greenhouses, Inc. has commenced litigation against James Possi and Your Florist, LLC, claiming damages allegedly sustained as a result of the defendants' violation of 15 U.S.C. § 1114, 15 U.S.C. § 1125(a) and (c), common law trademark violation, trademark infringement, unfair competition, violation of Wisconsin's Deceptive Trade Practices Act (Wis. Stat. § 100.18), and violation of the 2000 Stipulation and Order for Dismissal.

6. This Court has subject matter jurisdiction over the underlying action pursuant to 28 U.S.C. § 1132. American Family has moved to intervene in the underlying action as of right pursuant to Fed. R. Civ. P. 24(a)(2). American Family's claims fall within the supplemental jurisdiction of this Court. 28 U.S.C. § 1367.

7. American Family has issued two policies of insurance to the defendant Your Florist, LLC and said policies were in effect during certain time periods beginning in 2015. The policies which American Family issued to Your Florist, LLC were Businessowners policies, and are subject to all of the terms, conditions, limitations, and exclusions contained therein.

8. Pursuant to the terms, conditions, limitations, and exclusions contained within the Businessowners policies of insurance that American Family issued to Your Florist, LLC, American Family has no duty to defend or indemnify the defendants against the allegations alleged against them in this lawsuit.

9. A bona fide dispute and controversy regarding insurance coverage exists based upon the allegations contained in the plaintiff's Complaint and Amended Complaint, and the

various terms, conditions, limitations, and exclusions contained within the policies of insurance issued by American Family Mutual Insurance Company to Your Florist, LLC.

10. Pursuant to 28 U.S.C. § 2201, this intervening defendant seeks a declaration from the Court regarding the terms, conditions, limitations, and exclusions contained within the policy of insurance of the intervening defendant, and a declaration that the intervening defendant does not owe a duty to defend or indemnify James Possi and Your Florist, LLC for any claims asserted against them in this litigation.

WHEREFORE, American Family Mutual Insurance Company respectfully requests that this Court grant a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring that American Family Mutual Insurance Company owes no duty to defend or indemnify James Possi and Your Florist, LLC for any of the claims alleged against them in this action. In addition, American Family Mutual Insurance Company seeks its costs, disbursements, and reasonable attorney's fees in this action and whatever other relief the court deems just and equitable.

THIS INTERVENOR DEFENDANT DEMANDS A JURY OF TWELVE PERSONS.

Dated this 14th day of November, 2016.

EMILE BANKS & ASSOCIATES, LLC
Attorneys for Proposed Intervenor
Defendant American Family Mutual
Insurance Company

s/ Vicki L. Arrowood

By: _____
VICKI L. ARROWOOD
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Proof of Service:

The undersigned certifies that the foregoing document has been filed electronically on November 14, 2016 and is available for viewing and downloading from the ECF system. The document was served upon the following through their consent to electronic service:

Attorney Matthew M. Fernholz
Attorney Peter J. Plaushines
Attorney Joseph M. Wirth
Attorney Heather M. Bessinger
Attorney Matthew L. Granitz

The document was served upon the following through U.S. mail (paper copy) due to their nonconsent to electronic service:

None

s/ Amy Bowman, Legal Assistant